

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259

To: Chief, Wireline Competition Bureau

**REPLY COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION  
TO NEW YORK STATE PETITION FOR EXPEDITED WAIVER**

The Wireless Internet Service Providers Association (“WISPA”) hereby replies to the Comments submitted by the Pennsylvania Public Utilities Commission (“Pennsylvania PUC”)<sup>1</sup> in the above-captioned proceeding.<sup>2</sup>

**Discussion**

In a Petition for Expedited Waiver (“Petition”), New York State, through its Empire State Development (“ESD”), requested a waiver of Commission rules to obtain \$170.4 million in direct Connect America Fund (“CAF”) Phase II support, prior to finalization of rules and the Commission’s reverse auction, in order to align the timing of federal funding with ESD’s state broadband subsidy program.<sup>3</sup> In its Opposition,<sup>4</sup> among other things, WISPA pointed out that:

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<sup>1</sup> See Comments of the Pennsylvania Public Utilities Commission, WC Docket Nos. 10-90, 14-48 & 14-259 (filed Oct. 24, 2016) (“Pennsylvania PUC Comments”).

<sup>2</sup> *Public Notice*, “Wireline Competition Bureau Announces Deadlines for Filing Comments and Replies Regarding New York State’s Petition for Expedited Waiver of the Connect America Fund Phase II Auction Rules,” WC Docket No. 10-90, DA 16-1180 (rel. Oct. 13, 2016).

<sup>3</sup> See New York State Petition for Expedited Waiver, WC Docket No. 10-90, 14-58 & 14-259 (filed Oct. 12, 2016 (“Petition”).

granting the Petition would set a dangerous precedent that would, based on which state asked first, earmark federal CAF funding to a particular area. Any state or territory could implement a support program and ask the Commission to accelerate funding directly to them to align the two buckets of support. Assuming there is even enough money to go around, the reverse auction process would quickly devolve into a chaotic mess in which states extend their hand and the Commission fills it with support, to the detriment of private investment and the benefits of a reverse auction designed to award support to cost-effective bids. Taking this scenario to its logical extreme, there would be no need for any reverse auction because there would be no money available.<sup>5</sup>

Unfortunately, WISPA's prediction is proving true, with the Pennsylvania PUC now seeking to "expand on New York's current proposal and award the declined CAF II model support on an ongoing basis for ten years in the same census blocks and the same amount per census block per year as was declined by price cap carriers."<sup>6</sup> Under this proposal, CAF Phase II support would be available to "(1) a *state* that has a current broadband deployment program such as New York or (2) *states* like Pennsylvania that have already implemented a state-level broadband deployment program."<sup>7</sup> The Pennsylvania PUC "recommends that an *eligible carrier in an affected declined state* which is willing to 'step into the shoes' of the price cap carrier that declined the initial CAF II model cost support funds should be able to access those same funds for those same census blocks in the state(s) *in which it operates prior to the proposed CAF Phase II auction*."<sup>8</sup>

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<sup>4</sup> See Opposition of WISPA, WC Docket Nos. 10-90, 14-48 & 14-259 (filed Oct. 24, 2016) ("WISPA Opposition"). ViaSat, Inc. also opposed the Petition. See Comments of ViaSat, Inc., WC Docket Nos. 10-90, 14-48 & 14-259 (filed Oct. 24, 2016) ("ViaSat Comments").

<sup>5</sup> WISPA Opposition at 8-9 (footnote omitted). See also ViaSat Comments at 4-5 ("the Petition fails to establish that there is anything unique about New York State's situation, or to explain why New York State's rationale for its requested waiver could not also be advanced by other states. Indeed, as the Petition itself suggests, *every* state could argue that the interests of its residents would be better served if it were allowed guaranteed access to a large, fixed amount of Phase II funds with which to serve the interests of those residents").

<sup>6</sup> Pennsylvania PUC Comments at 4-5.

<sup>7</sup> *Id.* at 5 (emphases added).

<sup>8</sup> *Id.* (emphases added).

In addition to the objections WISPA raised in its Opposition,<sup>9</sup> the Pennsylvania PUC introduces a significant new problem that flies in the face of the Commission’s reverse auction. It appears that eligibility to participate in the Pennsylvania broadband program is limited to incumbent local exchange carriers (“ILECs”)<sup>10</sup> and, under the Pennsylvania PUC’s proposal, only those ILECs that operate in the state before the CAF reverse auction. The upshot of this proposal is that other broadband providers would be foreclosed from having any opportunity to receive a portion of the \$28.4 million in annual support that the Pennsylvania PUC would claim for itself even when they could meet the Commission’s performance and eligibility criteria,<sup>11</sup> bid lower than the CAF auction reserve price and provide a higher level of service.

Moreover, although the Pennsylvania PUC pledges to allocate CAF support to the same unserved census blocks where support was declined, it makes no mention of whether it will bind recipients to the performance criteria established by the Commission. In fact, that would be impossible, given that the auction framework permits bidders to select the speed, usage capacity and latency tiers it chooses to provide. There also is no mention of the criteria by which support could be suspended, no commitment for the Pennsylvania PUC to have the ability to suspend support, and no proposal for what happens to suspended support – does it go back to the Commission, or would the funds remain with the Pennsylvania PUC? Too many questions remain about whether the Pennsylvania broadband program would align with the principles established by the Commission.

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<sup>9</sup> WISPA incorporates by reference these objections into these Reply Comments.

<sup>10</sup> See Pennsylvania PUC Comments at 4 (referencing state “initiative to deploy broadband networks and advanced services provided by ILECs that operate under incentive regulation”) (emphasis added). See also *id.* at 4 n.11, citing 66 Pa. C.S. §§ 3001 *et seq.* and Comments of the Pennsylvania Public Utilities Commission, WC Docket Nos. 10-90, 14-48 & 14-259 (filed July 21, 2016).

<sup>11</sup> See 47 C.F.R. §54.315.

Finally, the Pennsylvania PUC proposal suffers from the same defect as ESD's – the provision of direct support by block grant to a state, which would then dole out the support (here, apparently, only to ILECs). As WISPA has stated, “directing block grants to states would set a bad precedent for future iterations of CAF funding by removing the benefits associated with a nationwide reverse auction that encourages private investment and cost-efficient deployment.”<sup>12</sup>

To be clear, WISPA supports state efforts to promote broadband deployment that are technology neutral, provider neutral and cost effective. States like Pennsylvania that provide support for broadband deployment should be commended and encouraged to continue their efforts. And like consumers in unserved areas of Pennsylvania and other states and territories, WISPA members wish that the Commission's rulemaking and implementation processes could conclude much more quickly. But these circumstances should not enable any state to negotiate for direct support that would be used to foreclose the ability of non-ILECs to obtain support, to employ different performance criteria and to harm consumers in other states where the demand for support may be greater as determined by the contemplated nationwide reverse auction.

The Pennsylvania PUC states that its views “could change in response to later events, including ex parte filings or the review of other filed comments and reply comments, and legal or regulatory developments at the state or federal level.”<sup>13</sup> WISPA hopes that the discussion above leads the Pennsylvania PUC to reconsider and withdraw its proposal.

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<sup>12</sup> WISPA Opposition at 9.

<sup>13</sup> Pennsylvania PUC Comments at 1.

## **Conclusion**

For the reasons discussed above and in the WISPA Opposition, the Bureau should reject New York State's Petition as well as the Pennsylvania PUC's piggy-backed request for direct CAF Phase II support.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

October 31, 2016

By: */s/ Alex Phillips*, President  
*/s/ Mark Radabaugh*, FCC Committee Chair

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